UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IONE LEWIS,

Plaintiff,

-against-

GMT NEW YORK LLC d/b/a GMT TAVERN,

Defendant.

Case No. 17 CV 2972

COMPLAINT

Plaintiff, IONE LEWIS, (hereinafter the "Plaintiff"), by and through her counsel, Donald J. Weiss, Esq., hereby files this Complaint and sues GMT NEW YORK LLC d/b/a GMT TAVERN (the "Tavern"), a domestic corporation, for a) injunctive relief, b) compensatory relief, and c) attorney fees and costs pursuant to 42 U.S.C. 12181, et. Seq., of the Americans with Disabilities Act ("ADA"), the New York City Human Rights Law ("NYCHRL"), and the New York State Human Rights Law ("NYSHRL") and alleges:

JURISDICTION AND PARTIES

1. This is an action for declaratory and injunctive relief pursuant to Title III of the ADA, 42 U.S.C. § 12181, et. Seq. This Court is vested with original jurisdiction under 28 U.S.C. §1331 and §1343.

2. Venue is proper in this Court, pursuant to 28 U.S.C. §1391(B) in that all events giving rise to this lawsuit occurred in the State of New York.

3. The premises where the events which gave rise to this lawsuit is known as 142 Bleecker Street, New York, New York (the "Property").

4. Venue is proper in this Court as the Property is located in New York County.

5. Upon information and belief, the Tavern is the lessee and/or operator and/or owner

of a bar and restaurant at the Property (hereinafter, the “Restaurant”).

6. Pursuant to 42 U.S.C. §12181 et. seq. and 28 C.F.R. §36.104, the Restaurant is a place of public accommodation in that it is an establishment which provides goods and services to the public.

7. Upon information and belief, the Tavern occupies the Property pursuant to a written agreement.

8. The remedies provided by the NYSHRL and NYCHRL against discrimination are not exclusive and state and city administrative remedies need not be exhausted in connection with suits brought under the ADA.

9. The Plaintiff has Cerebral Palsy. As a result, Plaintiff utilizes a wheelchair to ambulate. Plaintiff therefore has a disability within the meaning of the Title III of the Americans with Disabilities Act (“ADA”). 42 U.S.C. § 12102(2)(A). Plaintiff also has a physical disability within the meaning of the laws of the City and State of New York.

FACTS

10. On April 23, 2017, Plaintiff visited the Restaurant to see if she could enter but was unable to do so.

11. Plaintiff used to frequent the area where the Restaurant is located while she and her friends were in school.

12. She now travels to the area periodically to shop and eat and spend time with friends, even though she lives in the Bronx and must take 2 buses to do so.

13. As a result of the architectural barriers maintained by the Tavern at the entrance to the Restaurant, Plaintiff is deterred from attempting to enter and is denied full and equal access to, and full and equal enjoyment of, the facilities at the Property.

14. The Tavern's violations impede upon Plaintiff's right to travel free of discrimination.

15. Plaintiff will return to eat at the Restaurant once the barriers to her entry and enjoyment of the facilities have been removed (some of which are shown in annexed Exhibit A).

16. Records of the NYC Department of Buildings reveal that the Property has undergone substantial alterations since the advent of the ADA, the precise scope and nature of which are presently unknown.

17. Prior to commencement of this action, an investigation of the Restaurant was conducted, which revealed the following, including the statutory violations[1] described (all of which were observed by, or discussed with, Plaintiff prior to the filing of the Complaint):

The Restaurant is located at the corner of Bleecker and La Guardia Place. There are two steps that prevent the Plaintiff from entering. The first step is approximately 5.5 inches in height and the second is approximately 4.5 inches. The door, which opens out to the sidewalk, is recessed approximately 14inches. There is a hand rail located on the left side that goes from the sidewalk to the top of the steps.

Entrance Violations:

a) Plaintiff cannot move from the sidewalk into the Restaurant as there is no accessible route because of the steps. The steps at the door create a rise within the maneuvering clearance that Plaintiff cannot navigate in her wheelchair (201.1, 206.2.1, 206.4, 302, 402).

b) The steps at the door violate the requirement that alterations within primary function areas be made so that the path of travel to the altered areas are accessible to the maximum extent feasible (202.4).

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[1] All of the statutes cited hereunder refer to the 2010 ADA Standards for Accessible Design.

c) Defendant's failure to ramp the rise over ½ inch at the entrance means there is no accessible route capable of navigation by the Plaintiff in her wheelchair (206.4, 303.2, 303.4, 402.1, 402.2, 403.4, 404, 405).

d) There is no signage directing the Plaintiff to the nearest accessible entrance (216.6).

e) There are multiple tenancies within this lot/building that are not accessible. In spite of the regulations requiring at least one accessible entrance to each tenancy, the landlord has failed to ensure access is available here (206.4.5, 404).

Outside, on the La Guardia Place side, are "peg leg" style tables in an area approximately 6 feet wide and enclosed with barricades. None of these tables are ADA compliant and would not allow the Plaintiff to pull up in her wheel chair to eat and allow her enough room for her legs and feet. There is no 36" clear path of travel in the outside dining area which the Plaintiff could use to approach a table if she wished to sit outside.

Inside, there is counter seating by a window to the right and "pedestal" style dining tables to the left. The pedestal raised base does not allow an individual in a wheel chair to roll up under the table as the pedestal legs would obstruct both Plaintiff's chair and her feet. There is a bar that runs across the back side of the restaurant, with no lowered section which would allow the Plaintiff to approach the bar to join others or place an order.

***Dining Area Violations*:**

f) Restaurants must provide an accessible route to all dining areas, including outdoor dining areas, but none of the Restaurant's dining areas are accessible due to the steps and the narrow passages (206.2.5, 902.1).

g) There are no accessible tables in any of the dining areas which allow enough space for the Plaintiff to comfortably sit in her wheelchair beneath a table (226.1, 226.2, 306, 306.1, 306.2, 306.3, 902.2, 902.3).

There are two bathrooms in the rear, one for each gender. The door to the women's bathroom opens into the clear floor space. The hot water pipes are not wrapped to prevent burns. There is a mirror above the sink which is too high to allow the plaintiff to view herself as others are able to. There are two toilet compartments in the women's bathroom, approximately 30 inches wide and 49 inches long. There are no grab bars in either of the compartments for the Plaintiff to transfer from her chair to the toilet and vice versa.

***Toilet Room Violations*:**

h) Where toilet facilities are provided in facilities, at least one accessible bathroom shall be provided on an accessible route (213.2).

i) The required turning space is not present inside the toilet room, or inside any toilet compartment, which would allow Plaintiff to enter and close the door (304, 603.2.1).

j) The bottom of the mirror above the sink exceeds the required maximum permitted height of 40 inches above the floor (603.3).

k) No grab bars are present on either side of the toilet, which would allow individuals to transfer to and from the toilet (604.5, 604.8.2.3).

l) Toilet compartment doors are too narrow and would not allow Plaintiff entry in her wheel chair (604.8.1, 604.8.2).

COUNT I - VIOLATIONS OF THE ADA

18. The ADA prohibits discrimination on the basis of disability.

19. The ADA and the 2010 Standards for Accessible Design dictate that property owners and operators of commercial premises being used as "commercial establishments" are responsible for complying with these Federal Accessibility Standards.

20. The Plaintiff is informed and believes that the Property has begun operations and/or undergone substantial remodeling, repairs and/or alterations since January 26, 1990.

21. The Tavern has discriminated, and continues to discriminate, against the Plaintiff, and others that are similarly situated, by denying full and equal access to and full and equal enjoyment of goods, services, facilities, privileges, advantages, and/or accommodations of the Restaurant, in violation of the ADA.

22. The Plaintiff has been unable to, and continues to be unable to, enjoy full and equal safe access to, and the benefits of, all the accommodations and services offered by the Restaurant.

23. Plaintiff visited the Restaurant, with the intention of enjoying the Tavern's facilities, but was denied access to the Restaurant, and therefore suffered an injury in fact.

24. Plaintiff continues to visit the neighborhood where the Restaurant is located and will continue to visit the Restaurant in the future, but continues to be injured and discriminated against due to the architectural barriers which remain at the Restaurant, all in violation of the ADA.

25. To date, the barriers and other violations of the ADA still exist and have not been remedied or altered in such a way as to comply with the provisions of the ADA.

26. The Tavern continues to deny Plaintiff, who wishes to enjoy the Restaurant's services, opportunities which are equal to that afforded to others, by discriminating on the basis of a disability. 42 U.S.C. §§ 12182(b)(l)(A)(ii) and 12182(b)(l)(D)(i); 28 C.F.R. §§ 36.202(b) and 36.204.

27. The Tavern could have removed some of the illegal barriers at the Restaurant by i) ramping, with railings, the steps at the entrance; ii) providing ADA compliant and accessible seating, both indoors and out; and iii) providing an ADA compliant bathroom.

28. Pursuant to 42 U.S.C. §12188, this Court is vested with the authority to grant the Plaintiff injunctive relief, including an order to alter the Restaurant to make it readily accessible to, and useable by, individuals with disabilities to the extent required by ADA, and closing the Restaurant until the requisite modifications are completed.

COUNT II – VIOLATIONS OF THE NYCHRL

29. Plaintiff repeats, reiterates, and re-alleges each and every allegation hereinabove set forth with the same force and effect as if hereinafter set forth at length.

30. The NYCHRL provides:

> It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation because of the actual or perceived…disability…of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof…to the effect that any of the accommodations, advantages, facilities and or denied to any person on account of…disability…

NYC Admin. Code §8-107(4)(a).

31. The Tavern is in violation of the NYCHRL by denying the Plaintiff full and safe access to all of the benefits, accommodations and services of the Restaurant.

COUNT III – VIOLATIONS OF THE NYSHRL

32. Plaintiff repeats, reiterates, and re-alleges each and every allegation hereinabove set forth with the same force and effect as if hereinafter set forth at length.

33. The NYSHRL provides:

> It shall be unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of

> public accommodation…because of the…disability…of any person, directly, or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities, or privileges thereof…to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of…disability…

NYS Exec. Law §296 (2)(a).

34. The Restaurant is a place of public accommodation as defined in the NYSHRL.

35. The Tavern has further violated the NYSHRL by being in violation of the rights provided under the ADA.

36. The Tavern is in violation of the NYSHRL by denying the Plaintiff full and safe access to all of the benefits, accommodations and services of the Restaurant.

DAMAGES

37. The Plaintiff demands One Thousand Dollars ($1,000.00) in compensatory damages based on the Tavern's violation of the NYCHRL and the NYSHRL.

INJUNCTIVE RELIEF

38. Pursuant to 42 U.S.C. §1288, this Court is vested with the authority to grant the Plaintiff's injunctive relief; including an order to alter the Restaurant to make it readily accessible to, and useable by, individuals with disabilities to the extent required by the ADA, the NYCHRL and the NYSHRL, and closing the Restaurant until the requisite modifications are completed.

ATTORNEY'S FEES AND COSTS

39. The Plaintiff has been obligated to retain the undersigned counsel for the filing and prosecution of this action. The Plaintiff is entitled to have his reasonable attorneys' fees costs and expenses paid by the Tavern, pursuant to the ADA and the NYCHRL.

40. Plaintiff prays for judgment pursuant to N.Y. Exec. Law §297, including

compensatory damages contemplated by §297(9).

WHEREFORE, the Plaintiff hereby demands judgment against the Tavern and requests the following injunctive and declaratory relief:

a. The Court declares the Restaurant owned, operated, leased, controlled, and/or administered by the Tavern in violation of the ADA, the NYCHRL, and of the NYSHRL;

b. The Court enter an Order requiring the Tavern to alter its facilities and amenities to make them accessible to and usable by individuals with disabilities to the full extent required by Title III of the ADA and by NYCHRL, and the NYSHRL;

c. The Court enter an order directing the Tavern to evaluate and neutralize its policies, practices and procedures toward persons with disabilities, for such reasonable time to as to allow the Tavern to undertake and complete corrective procedures to the Restaurant;

d. The Court award Plaintiff such damages as are provided for under New York law;

e. The Court award reasonable attorney fees, all costs (including but not limited to court costs, expert fees, etc.) and other expenses of suit to the Plaintiff; and

f. The Court award such other and further relief as this Court deems necessary, just and proper.

Dated: April 24, 2017

Donald J. Weiss

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EXHIBIT A